SECOND AMENDMENT

Caetano v. Massachusetts, 577 U.S. --- (2016)
Decided March 21, 2016

FACTS: Caetano was involved in a "bad altercation" with her boyfriend that resulted in her being hospitalized. She "obtained multiple restraining orders against her abuser, but they proved futile." A friend provided her with a stun gun for self-defense.

> It is a good thing she did. One night after leaving work, Caetano found her ex-boyfriend "waiting for [her] outside." He "started screaming" that she was "not gonna [expletive deleted] work at this place" any more because she "should be home with the kids" they had together. Caetano's abuser towered over her by nearly a foot and outweighed her by close to 100 pounds. But she didn't need physical strength to protect herself. She stood her ground, displayed the stun gun, and announced: "I'm not gonna take this anymore. . . . I don't wanna have to [use the stun gun on] you, but if you don't leave me alone, I'm gonna have to." The gambit worked. The ex-boyfriend "got scared and he left [her] alone."

Under Massachusetts law, however, her possession of the stun gun, "that may have saved her life made her a criminal." When it was discovered that she had the stun gun, in the context of another matter, she was charged with, and convicted of, possession of the stun gun, which was banned under state law as an "electrical weapon." Her conviction was affirmed, with the Massachusetts Supreme Judicial Court holding that it "is not the type of weapon that is eligible for Second Amendment protection" because it was "not in common use at the time of [the Second Amendment's] enactment."

Caetano requested certiorari and the U.S. Supreme Court granted review.

ISSUE: Are stun guns / electrical weapons protected under the Second Amendment?

HOLDING: Yes

DISCUSSION: The Court noted that the state court had focused on "whether a particular weapon was "'in common use at the time' of enactment of the Second Amendment." In Heller, however, the Court stated it had "emphatically rejected such a formulation."[1] Focusing on arms in existence in the 18th century was "not merely wrong, but "bordering on the frivolous."

In Heller the Court held that:

[1] District of Columbia v. Heller, 554 U.S. 570 (2008).

> … the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding."[2]

The Court was astounded that the Massachusetts court did not mention Heller, but seized on U.S. v. Miller, instead.[3] However, the Court said, Miller did not stand for the idea that only weapons in use in 1789 were covered, but instead simply reflected the reality that the militia of the time consisted of citizens who brought their own assortment of arms if called up. The Court noted that most of the common firearms of today did not exist at the time, such as revolvers and semi-automatic pistols. The Court agreed that:

> Electronic stun guns are no more exempt from the Second Amendment's protections, simply because they were unknown to the First Congress, than electronic communications are exempt from the First Amendment, or electronic imaging devices are exempt from the Fourth Amendment.

The Court summarized:

> Heller defined the "Arms" covered by the Second Amendment to include "any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another."

The Court pointed out that firearms are dangerous per se, yet "cannot be categorically prohibited just because they are dangerous." Further, the Court noted "Miller and Heller recognized that militia members traditionally reported for duty carrying "the sorts of lawful weapons that they possessed at home," and that the Second Amendment therefore protects such weapons as a class, regardless of any particular weapon's suitability for military use."

In addition, the Court noted that Massachusetts has an exemption for "law enforcement and correctional officers to carry stun guns and Tasers, presumably for such purposes as nonlethal crowd control. Subduing members of a mob is little different from "suppress[ing] Insurrections," a traditional role of the militia." Some members of the military are also authorized to use such weapons against targets, as well.

The Court observed that the proper question is "whether stun guns are commonly possessed by law-abiding citizens for lawful purposes *today*." Although the Massachusetts court argued that firearms are in far more common use that electrical weapons, in fact, the Court noted, "hundreds of thousands of Tasers and stun guns have been sold to private citizens" and they are lawful to possess in 45 states.

The Court ruled that Massachusetts court seemed to be suggesting that Caetano could have "simply gotten a firearm to defend herself." However, the Court agreed, "the right to bear other weapons is 'no answer' to a ban on the possession of protected arms."

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[2] Stun guns are plainly "bearable arms." As Heller explained, the term includes any "[w]eapo[n] of offence" or "thing that a man wears for his defence, or takes into his hands," that is "carr[ied] . . . for the purpose of offensive or defensive action." 554 U. S., at 581, 584 (inter

[3] 307 U. S. 174 (1939)

> Moreover, a weapon is an effective means of self-defense only if one is prepared to use it, and it is presumptuous to tell Caetano she should have been ready to shoot the father of her two young children if she wanted to protect herself. Courts should not be in the business of demanding that citizens use more force for self-defense than they are comfortable wielding.
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> Countless people may have reservations about using deadly force, whether for moral, religious, or emotional reasons—or simply out of fear of killing the wrong person. "Self-defense," however, "is a basic right."[4] I am not prepared to say that a State may force an individual to choose between exercising that right and following her conscience, at least where both can be accommodated by a weapon already in widespread use across the Nation.

The Court concluded:

> A State's most basic responsibility is to keep its people safe. The Commonwealth of Massachusetts was either unable or unwilling to do what was necessary to protect Jaime Caetano, so she was forced to protect herself. To make matters worse, the Commonwealth chose to deploy its prosecutorial resources to prosecute and convict her of a criminal offense for arming herself with a nonlethal weapon that may well have saved her life. The Supreme Judicial Court then affirmed her conviction on the flimsiest of grounds. This Court's grudging per curiam now sends the case back to that same court. And the consequences for Caetano may prove more tragic still, as her conviction likely bars her from ever bearing arms for self-defense.
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> If the fundamental right of self-defense does not protect Caetano, then the safety of all Americans is left to the mercy of state authorities who may be more concerned about disarming the people than about keeping them safe.

FULL TEXT OF DECISION: http://www.supremecourt.gov/opinions/15pdf/14-10078_aplc.pdf

[4] McDonald v. City of Chicago, 561 U.S. 742 (2010).